

May 02, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROY D. CHEESMAN,

Plaintiff,

v.

TABITHA SNYDER, MAYRA CUENCA,

PAMELA ANDERSON, BERTA

NORTON, DEPARTMENT OF SOCIAL

AND HEALTH SERVICES,

CHILDREN'S ADMINISTRATION,

Defendants.

No. 1:18-cv-03224-SAB

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS**

Before the Court is Defendants' Motion to Dismiss, ECF No. 12. The motion was heard without oral argument. Plaintiff is proceeding *pro se*; Defendants are represented by Jake Brooks, Assistant Attorney General for Washington state.

Defendants argue the Court should dismiss Plaintiff's Complaint for three reasons: (1) Failure to state a claim; (2) res judicata; and (3) collateral estoppel.

Defendants argue that Plaintiff has failed to allege factual allegations that meet the *Iqbal* pleading standard to survive a motion to dismiss. The Court conducted a 28 U.S.C. § 1915(e) review of Plaintiff's Complaint and determined that Plaintiff adequately plead a § 1983 due process claim. To the extent Defendants are asking the Court to reconsider that decision, it declines to do so.

Defendants ask the Court to find that res judicata and collateral estoppel bar

1 Plaintiff's due process claim. Under either theory, it is necessary that a final
2 judgment on the merits occurs in the underlying proceeding. Defendants provided
3 the Court with an Order from Judge Sparks of the Kittitas County Superior Court
4 to support their contention that there was a final judgment on the merits. What
5 Defendants fail to appreciate is that Judge Sparks dismissed Plaintiff's lawsuit
6 *without* prejudice. ECF No. 13 at 49 (emphasis added). It goes without saying that
7 dismissal without prejudice is not a final judgment on the merits. *See Stewart v.*
8 *U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) ("The phrase 'final judgment on
9 the merits' is often used interchangeably with 'dismissal with prejudice.'"); *Hells*
10 *Canyon Preservation Council v. U.S. Forest Service*, 403 F.3d 683, 699-91 (9th
11 Cir. 2005). As such, it is premature for Defendants to argue res judicata or
12 collateral estoppel.

13 Defendants also ask the Court to dismiss this action because Plaintiff's wife
14 filed a similar lawsuit that is pending in the Eastern District of Washington.
15 Because it is pending there is no final judgment on the merits so it would not be
16 appropriate to dismiss this action on that basis. Defendants are invited to file a
17 motion to consolidate if they believed it would be in the interests of justice for the
18 Court to hear both cases at the same time.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendants' Motion to Dismiss, ECF No. 12, is **DENIED**.

3 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
4 and forward copies to Plaintiff and counsel.

5 **DATED** this 2nd day of May 2019.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

13 Stanley A. Bastian
14 United States District Judge
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